

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

DAVID LEE HUGGARD,

Defendant.

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Case No. 1:13CR00005

ORDER

JUDGE JAMES P. JONES

The defendant received authorization from the court of appeals on the basis of 28 U.S.C. § 2244 and 28 U.S.C. § 2255(h) to file in this court a successive motion to vacate under 28 U.S.C. § 2255. Corrected Order, No. 22-134 (4th Cir. Apr. 7, 2022). The defendant contends in his motion that there is newly discovered evidence that establishes his innocence.

Section 2255(h) provides that a second or successive motion under § 2255 may be authorized by the court of appeal if it contains “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.” 28 U.S.C. § 2255(h)(1). To obtain such authorization, the applicant need not definitely show that he will prevail on his claim, but he must “make[] a *prima facie* showing that the application satisfies the

requirements.” *In re Thomas*, 988 F.3d 783, 788 (4th Cir. 2021) (alterations in original) (citing 28 U.S.C. § 2244(b)(3)(C)).

While the government has moved to dismiss the defendant’s § 2255 motion, I find that in light of the finding by the court of appeals that the motion satisfies a *prima facie* case, I should under the circumstances deny the motion to dismiss without prejudice and appoint counsel and schedule an evidentiary hearing on the motion.

Accordingly, it is **ORDERED** as follows:

1. United States’ Motion to Dismiss, ECF No. 131, is **DENIED** without prejudice;
2. The Clerk shall arrange for the appointment of counsel from the court’s CJA panel to represent the defendant as to this § 2255 motion;
3. Following appointment of counsel, the Clerk shall schedule an evidentiary hearing. The United States shall arrange for the personal presence of the defendant at the hearing; and
4. The Clerk shall send a copy of this Order to the defendant.

ENTER: July 8, 2022

/s/ JAMES P. JONES
Senior United States District Judge